

# **Uttaranchal High Court**

**Mussoorie Dehradun Development ...**

**VS**

**The Chief Information ...**

**on 11 January, 2010**

**HIGH COURT OF UTTARAKHAND AT NAINITAL**

**Writ Petition No. 818 of 2009 (M/S)**

**Mussoorie Dehradun Development Authority. ... Petitioner.**

**Versus**

**The Chief Information Commissioner**

**And others. ... Respondents**

**Shri Kanwaljeet Singh with Ms. Pooja Banga, Advocates for the  
petitioner,**

**Shri Vipul Sharma, Advocate for respondent nos. 1 & 2,**

**Shri Pradeep Hairiya, and Shri Ravi Joshi, Advocates for  
respondent nos. 3 & 4.**

Dated: January 11,2010:

Hon'ble V.K. Bist, J.

Brief facts giving rise to the petition are that on 26.06.2006, the respondent nos. 3 & 4, namely, Shri Pradeep Dutta and Shri Jai Deep Dutta moved an application under Section 6 of the 'Right to Information Act, 2005' (hereinafter referred to as the 'Act'), whereby in addition to the other information contained in the application, the certified copy of approved plan and layout plan of Hotel Pacific as well as the sanction letter were sought from the petitioner to which the petitioner responded vide communication no. 351 dated 24.07.2008 whereby particulars relating to the required file number and other details were sought from the applicants/ respondent nos. 3 & 4 so as to facilitate them responding to the requisite information. It is

alleged in the petition that the respondent nos. 3 & 4 instead of giving information as sought by the petitioner, filed First Appeal u/s 19(1) of the 'Act' before the Appellate Departmental Authority, which was decided on 22.10.2008. In the order dated 22.10.2008 the First Appellate Authority, MDDA, Dehradun stated that file no. 1351/86 is not traceable and the petitioner is making intensive efforts for locating the same and as soon as the file is located the information sought would be provided. Thereafter, the respondent nos. 3 and 4 on 01.12.2008 preferred Second Appeal no. A/1045/2008 u/s 19(3) of the 'Act' before the State Information Commission, Uttarakhand. On 18.02.2009, the Chief Information Commissioner decided the appeal and found the petitioner responsible for the missing of required file. It was ordered that the file be reconstructed and further a sum of Rs. 50,000/- was imposed on the petitioner u/s 19 (8) (b) of the 'Act' towards damages. Thereafter, the petitioner filed an application on 09.03.2009 seeking recall of the order dated 18.02.2009, but instead of deciding the recall application, the respondent no.1 issued a show cause notice on 06.04.2009 and response thereof was filed by the petitioner on 22.04.2009. It has been alleged in the petition that the respondent no.1 without considering the recall application of the petitioner, passed an order dated 15.05.2009 which is against the provisions of the 'Act' and is without authority and jurisdiction. Aggrieved with the orders dated 18.02.2009 and the subsequent order dated 15.05.2009 passed by respondent no.1, present writ petition has been filed.

2. Respondent nos. 3 and 4 filed their joint counter affidavit in which they have submitted that since the petitioner did not comply with the statutory provisions of the 'Act', therefore the respondents filed an appeal under the 'Act'. The respondents have submitted that letter dated 22.10.2008, addressed to the respondents by the Vice President, MDDA, itself illustrates that the Vice President, MDDA himself admitted his mistake by putting an endorsement that 'map file no. 1356/86 is not traceable in his office' which indicate wilful negligent on the part of the authority concerned because the petitioner is wholly responsible in the affairs of his office, therefore, he cannot escape from his liability being conferred upon him under the law and the order passed by the respondent no.1 is valid. The respondent nos. 3 and 4 have further submitted that since there is no such provision under the 'Act' to move an application seeking recall/review of the order passed by the Chief Information Commissioner, as such the said application is not legally maintainable.

3. Heard Shri Kanwaljeet Singh and Ms. Pooja Banga, the learned counsel for the petitioner, Shri Vipul Sharma, the learned counsel for respondent nos. 1 and 2 and Shri Pradeep Hairiya and Shri Ravi Joshi, the learned counsel for respondent nos. 3 and 4 and perused the entire material available on record.

4. Shri Kanwaljeet Singh and Ms. Pooja Banga, the learned counsel for the petitioner submitted that final order in the appeal u/s 19 (3) of the 'Act' could have been passed only by the State Information Commission and not by the Chief Information Commissioner/respondent no.1 who has gone beyond his jurisdiction. They argued that the impugned order has been passed by invoking Section 19 (8) (b) of the 'Act' which could have been passed by the State Information Commissioner. The 'Act' provides/ secure access to information under the control of Public Authorities and the information which is lost, can only be given after reconstruction of the concerned file. The counsel for the petitioner further argued that respondent no.1 also had no jurisdiction to pass a punitive order, as the respondent nos. 3 and 4 did not pray for any penalty to be imposed on the petitioner, therefore, the order imposing penalty/damages/compensation on the petitioner, is against the provisions of the 'Act' and is totally without jurisdiction. In support of their arguments the learned counsel for the petitioner relied on AIR 2007 Himachal Pradesh 63 Virender Kumar vs. P.S. Rana and Anr. and AIR 2009 (NOC) 254 KAR.

5. Shri Vipul Sharma, the learned counsel for the respondent nos. 1 and 2 and Shri Pradeep Hariya and Shri Ravi Joshi, the learned counsel for respondent nos. 3 and 4 submitted before the Court that respondent no.1 is fully competent to pass order in an appeal under the 'Act' and order passed by him cannot be set-aside on the ground of lack of jurisdiction. They further submitted that even for the sake of arguments it is assumed that State Information Commission was not properly constituted even then the acts done by it and judgments and orders passed by it would have the same efficacy as judgments and orders passed by the properly constituted State Information Commission. Learned counsel for the respondent nos. 1 and 2 submitted that Chief Information Commissioner has decided more than 3691 cases, and in case, all the judgments rendered by him are null and void owing to lack of proper constitution then that would lead to a stage of chaos. Shri Vipul Sharma relied on the judgment cited in (1995) 4 Supreme Court Cases 611-T.N. Seshan vs. Union of India and (1981) 3 Supreme Court Cases 132 [Gokaraju Rangaraju vs. State of Andhra Pradesh](#).

6. The question for consideration before the Court is whether State Information Commission should be multimember body as provided under Section 15(2) and 19 of the 'Act'. For proper appreciation Sections 15 and 19 of the 'Act' are being reproduced below:- "15. Constitution of State Information Commission:

(1) Every State Government shall, by notification in the Official Gazette, constitute a body to be known as the ...(name of the State), Information Commission to

exercise the powers conferred on, and to perform the functions assigned to, it under this Act.

(2) The State Information Commission shall consist of-

(a) the State Chief Information Commissioner; and

(b) such number of State Information

Commissioners, not exceeding ten, as may be deemed necessary.

(3) The State Chief Information commissioner and the state Information Commissioners shall be appointed by the Governor on the recommendation of a committee consisting of-

(i) the Chief Minister, who shall be the Chairperson of the Committee;

(ii) the Leader of Opposition in the Legislative Assembly; and

(iii) a Cabinet Minister to be nominated by the Chief Minister.

Explanation:- For the purposes of removal of doubts, it is hereby declared that where the Leader of Opposition in the Legislative Assembly has not been recognised as such, the Leader of the single largest group in opposition of the Government in the Legislative Assembly shall be deemed to be the Leader of Opposition.

(4) The general superintendence, direction and management of the affairs of the State Information commission shall vest in the State Chief Information Commissioner who shall be assisted by the State Information Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the State Information Commission autonomously without being subjected to directions by any other authority under this Act.

(5) The State Chief Information Commissioner and the State Information Commissioner shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance. (6) The State Chief Information Commissioner or a State Information Commissioner shall not be a Member of Parliament or Member of the Legislature of any State or Union territory, as the case may be, or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession. (7) The headquarters of the State Information Commission shall be at such place in the State as the State

Government may, by notification in the Official Gazette, specify and the State Information Commission may, with the previous approval of the State Government, establish offices at other places in the State.

"19. Appeal:-

(1) Any person who, does not receive a decision within the time specified in sub-section (1) or clause (a) of sub-section (3) of Section 7, or is aggrieved by a decision of the Central Public Information Officer or the State Public Information Officer, as the case may be, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the central Public Information Officer or the State Public Information Officer, as the case may be, in each public authority:

Provided that such officer may admit the appeal after the expiry of the period of thirty days if he or she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) Where an appeal is preferred against an order made by a Central Public Information Officer or a State Public Information Officer, as the case may be, under section 11 to disclose third party information, the appeal by the concerned third party shall be made within thirty days from the date of the order. (3) A second appeal against the decision under sub- section (1) shall lie within ninety days from the date on which the decision should have been made or was actually received with the Central Information Commission or the State Information Commission.

Provided that the Central Information Commission or the State Information Commission, as the case may be, may admit the appeal after the expiry of the period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(4) If the decision of the Central Public Information Officer or State Public Information Officer, as the case may be, against which an appeal is preferred relates to information of a third party, the Central Information Commission or State Information Commission, as the case may be shall give a reasonable opportunity of being heard to that third party.

(5) In any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the Central Public Information Officer or State Public Information Officer, as the case may be, who denied the request.

(6) An appeal under sub-section (1) or sub-section (2) shall be disposed of within thirty days of the receipt of the appeal or within such extended period not exceeding a total of forty-five days from the date of filing thereof, as the case may be, for reasons to be recorded in writing.

(7) The decision of the Central Information Commission or State Information Commission, as the case may be, shall be binding.

(8) In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to

(a) require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including-

(i) by providing access to information, if so requested, in a particular form;

(ii) by appointing a Central Public Information Officer or State Public Information Officer, as the case may be;

(iii) by publishing certain information or categories of information;

(iv) by making necessary charges to its practices in relation to the maintenance, management and destruction of records;

(v) by enhancing the provision of training on the right to information for its officials;

(vi) by providing it with an annual report in compliance with clause (b) of sub-section (1) of Section 4;

(b) require the public authority to compensate the complainant for any loss or other detriment suffered;

(c) impose any of the penalties provided under this Act;

(d) reject the application;"

9. The Central Information Commission or State Information Commission, as the case may be, shall give notice of its decision, including any right of appeal, to the complainant and the public authority.

10. The Central Information Commission or State Information Commissioner, as the case may be, shall decide the appeal in accordance with such procedure as may be prescribed."

7. Having heard the learned counsel for the parties and on careful examination of Section 15 (2) of the 'Act' it is clear that Section 15 (2) of the 'Act' provides that the State Information Commission should be a multimember body consisting of the State Chief Information Commissioner and such number of State Information Commissioners, not exceeding ten, as may be deemed necessary. Between clause (a) and (b) of sub- section (2) of Section 15 of the 'Act' conjunction "and" has been used. Thus, it is clear that State Information Commission should consist of one State Chief Information Commissioner and at least one State Information Commissioner. The order dated 18.02.2009 passed by the Chief Information Commissioner, State of Uttarakhand, Dehradun cannot said to be an order passed by the State Information Commissioner as provided under Section 19(3) of the 'Act'. This Court is of the opinion that in view of the existing provisions of the 'Act', the ratio of the judgments cited by the learned counsel for the respondents is not applicable in the instant case. Thus, the order dated 18.02.2009 passed by the Chief Information Commissioner is without jurisdiction and is liable to be set-aside.

8. In the foregoing facts and circumstances, the writ petition is allowed. The order dated 18.02.2009 passed by the Chief Information Commissioner/ respondent no.1 in Second Appeal no. A1045/2008 as well as subsequent order dated 15.05.2009 are hereby set- aside only on the ground for want of jurisdiction. The State Information Commissioner is directed to decide the Second Appeal in question filed by the respondent nos. 3 and 4, expeditiously.

9. No order as to costs.

(V.K. Bist, J.)

11.01.2010:

NCM: